



Signed and Filed: November 30, 2006

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No: 05-34490
	)	
BENNY PAUL VALDEZ and	)	Chapter 13
PATRICIA ANN VALDEZ,	)	
	)	Date: November 13, 2006
	)	Time: 9:30 a.m.
	)	Crtm: 235 Pine St., 23rd Floor
Debtors.	)	San Francisco, CA 94104

**MEMORANDUM RE MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS**

At the above date and time, the court held a hearing on Debtors' Motion to Compel Discovery and For Sanctions (the "Motion to Compel"). Cathleen Cooper Moran appeared for Debtors. No one appeared for the responding parties. I determine that the motion should be granted as follows.

**FACTS**

On February 10, 2006, this court held a hearing on Debtors' Motion for Damages for Violation of Automatic Stay. The court determined that Jason Evans, Esq., the Law Offices of Jason Evans, P.C. and Lucas Teter, a non-attorney working for Mr. Evans, knowingly violated the automatic stay applicable in the above-

1 referenced bankruptcy case. On February 21, 2006, the court  
2 entered an order awarding damages for the knowing-stay violation  
3 (the "Sanctions Order"). The Sanctions Order imposes \$5,000  
4 damages on Mr. Teter, Mr. Evans, and the Law Offices of Jason  
5 Evans,<sup>1</sup> for which the sanctioned parties are jointly and severally  
6 liable. On February 23, 2006, the court served the Sanctions Order  
7 on the sanctioned parties.

8 When none of the sanctioned parties paid the damages imposed  
9 on them by the Sanctions Order, counsel for Debtors, Cathleen  
10 Cooper Moran, properly served interrogatories (the  
11 "Interrogatories") on Mssrs. Teter and Evans. On June 17, 2006,  
12 Ms. Moran wrote to Mr. Teter requesting a response to the  
13 Interrogatories, and seeking to meet and confer regarding Mr.  
14 Teter's failure to respond. On July 10, 2006, Ms. Moran wrote to  
15 Mr. Evans regarding his failure to respond to the Interrogatories,  
16 and seeking to meet and confer regarding Mr. Evans' failure to  
17 respond. Ms. Moran thereafter received an undated letter from  
18 someone named Daniel Mendez on the letterhead of the Law Offices of  
19 Jason J. Evans, P.C., stating that Mr. Teter was no longer employed  
20 by the Law Offices, and requesting that Ms. Moran direct further  
21 correspondence regarding "this matter" to Ms. Anna Burkard or Mr.  
22 Daniel Mendez. The letter does not provide a forwarding address  
23 for Mr. Teter, does not reference the Interrogatories, does not  
24 identify the relationship of Ms. Burkard or Mr. Mendez to the

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27 <sup>1</sup> The Sanctions Order uploaded by Debtors' counsel and signed  
28 by the court omits the " P.C." suffix.

1 sanctioned parties, and does not indicate whether Ms. Burkard or  
2 Mr. Mendez are attorneys.

3       On July 19, 2006, Ms. Moran wrote to Mr. Mendez requesting a  
4 current address for Mr. Teter, and notifying Mr. Mendez that she  
5 would be preparing a motion to compel discovery and for further  
6 sanctions. Ms. Moran also verified on the New York State Bar  
7 website Mr. Evans' status as an attorney currently active with the  
8 New York State Bar, whose bar registration number is 2891851, and  
9 whose address as of that date<sup>2</sup> was 5350 Main St., Williamsville, NY  
10 14421 (the "Williamsville Address").

11       Ms. Moran never received a response to her letter to Mr.  
12 Mendez.

13       On October 10, 2006, Ms. Moran filed and served on the  
14 sanctioned parties at, inter alia, the Williamsville Address, the  
15 Motion to Compel and related pleadings. The Motion to Compel is  
16 supported by a declaration of Ms. Moran regarding her good-faith  
17 attempts to confer with Mssrs. Teter and Evans, who apparently are  
18 not represented by counsel, in an effort to obtain responses to the  
19 Interrogatories without court action. The Motion to Compel and  
20 related pleadings were not returned to Ms. Moran, which indicates  
21 that they reached the intended destination.

22       As of the date of the hearing on the Motion, the sanctioned  
23 parties had not paid the sanctions, nor had they responded to the  
24 Interrogatories. The court has no knowledge that the sanctioned  
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26       <sup>2</sup> As of November 27, 2006, the contact information for Jason  
27 J. Evans provided on the New York State Bar Website is: Law Offices  
28 of Jason J. Evans P.C., 5335 Main St., 2nd Floor, Williamsville, NY  
14221-5389; (716) 630-0555.

1 parties have since paid the sanctions or responded to the  
2 Interrogatories.

3 Pursuant to Bankruptcy Rule 7037, Debtors move the court for  
4 an order compelling the sanctioned parties to provide answers to  
5 the Interrogatories within 15 days of entry of its order on the  
6 Motion to Compel, for an award of Debtors' attorney fees for  
7 bringing the Motion to Compel, and for additional sanctions in an  
8 amount three times the fees for the sanctioned parties' failure to  
9 comply with the Sanctions Order.

10 On November 13, 2006, after the hearing on the Motion to  
11 Compel, Ms. Moran filed a declaration and billing statements  
12 detailing that Debtors have incurred \$2,370.50 in their efforts to  
13 enforce the Sanctions Order. Of this amount, approximately \$1,980  
14 relates to drafting, calendaring, and appearing at the hearing on  
15 the Motion to Compel.

16 **LAW**

17 Federal Rule of Bankruptcy Procedure 7037(a)(4), applicable to  
18 this contested matter via Bankruptcy Rule 9014(c), provides that if  
19 the court grants a motion to compel discovery, the court

20 shall, after affording an opportunity to be heard,  
21 require the party or deponent whose conduct necessitated  
22 the motion or the party or attorney advising such conduct  
23 or both of them to pay the moving party the reasonable  
24 expenses incurred in making the motion, including  
25 attorney's fees. . . .

26 In order to defeat the presumption in favor of awarding  
27 expenses to the prevailing party of a motion to compel, the court  
28 must make a specific finding, such as that the failure to respond  
was substantially justified or that other circumstances would make  
an award of expenses unjust. Rule 7037(a)(4); Barton Bus. Park

1 Associates v. Alexander (In re Barton Bus. Park Associates), 118  
2 B.R. 776, 780 (Bankr. E.D. Cal. 1990). The losing party bears the  
3 burden of persuading the court that the court should not award the  
4 prevailing party's reasonable expenses. Barton Bus. Park  
5 Associates, 118 B.R. at 780.

6 **DISCUSSION**

7 The sanctioned parties have not responded to the Motion to  
8 Compel, and apparently do not contest that the Motion to Compel was  
9 properly served. Accordingly, the court grants the Motion to  
10 Compel, and determines that Lucas Teter and Jason Evans must pay  
11 the \$1,980 in attorneys fees reasonably incurred by Debtors in  
12 prosecuting the Motion to Compel, which sum is in addition to the  
13 \$5,000 owed by the sanctioned parties pursuant to the Sanctions  
14 Order.

15 Assuming that the court has inherent authority to impose  
16 monetary penalties for the sanctioned parties' failure to comply  
17 with the Sanctions Order,<sup>3</sup> the court declines to do so at this time.  
18 The court may do so in the future on properly noticed motion,  
19 citing to appropriate authority, should the sanctioned parties  
20 continue to ignore the Sanctions Order and the order compelling  
21 discovery (the purpose of which is to assist Debtors in obtaining  
22 compliance with the Sanctions Order).

23 Should the sanctioned parties, including attorney Jason Evans,  
24 continue to ignore the Sanctions Order, counsel for Debtors may  
25 wish to consider providing the disciplinary body of the New York

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27 <sup>3</sup> The only authority cited by Debtors in support of their  
28 request for sanctions for failure to comply with the Sanctions  
Order is Bankruptcy Rule 7037, which applies to discovery disputes.

1 State Bar with copies of the orders issued by this court, which  
2 impose liability on bar member Jason Evans.

3 **\*\*END OF MEMORANDUM\*\***  
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Court Service List

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